

NATURAL RESOURCES COMMISSION

Meeting Minutes

April 4, 2007

Pursuant to the notice duly filed with the Town Clerk, the meeting of the Natural Resources Commission was held in the First Floor Meeting Room, 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, April 4, 2007. The following Commissioners were present: Chair, Paul Feshbach-Meriney; Alexander Easterday; Montgomery Lovejoy; Jamie Bemis; and Steve Verrill. Associate Member George Lewis was present at 8:00pm. Katie Holden, Natural Resources Assistant Administrator; and Cynthia Gray, Natural Resources Administrative Assistant, were also present.

TOWN OF CONCORD – WHITE POND WELL / RDA #07-05:

Elena Proakis Ellis, CPW Water & Sewer Engineer, appeared. The project involves the installation of a water transmission main within the roadway at Hemlock Street and Old Road to Nine Acre Corner (ORNAC). The new treatment plant at Deaconess will service the White Pond and Deaconess wells. A portion of the work is within Estimated Habitat of the blue-spotted salamander. This area is also habitat to the elderberry borer beetle which is no longer listed as a rare species by Natural Heritage. Natural Resources staff will inspect erosion controls and silt sacs in catch basins prior to commencement of work. Ms. Proakis Ellis discussed the methodology consisting of a 5-foot wide, 6-foot deep trench in the pavement which would be closed at night, and a temporary patch done every week.

Alexander Easterday moved to accept a Finding that No determination as to the extent or location of any jurisdictional resource areas on this site is made for this filing. Future proposed work may require the delineation of all resource areas. Montgomery Lovejoy seconded. All so voted.

Alexander Easterday moved to issue a Negative Determination #2 and #3 with two Special Conditions: (1) No trench work shall commence within Estimated Habitat of Rare Wildlife after June 1, 2007. (2) A preconstruction site visit shall be held to review and approve erosion controls. Steve Verrill seconded. All so voted.

CONTINUANCES:

GRACE PROPERTIES, LLC – 63B Cambridge Turnpike / NOI-DEP File # 137-919:

Calvin R. Goldsmith, Goldsmith, Prest & Ringwall, Inc. (GPR), Calvin Mavrung, GPR, Roy A. Cramer, Esq., of Frieze, Cramer, Cygelman, Rosen & Shubert, LLP, Lisa Standley, VHB, and Michael Malouf, property owner, appeared. This project involves road construction and associated grading, construction of two single-family dwellings with associated subsurface sewage disposal systems, driveways and utilities within 100 feet of Bordering Vegetated Wetlands and the 200-foot Riverfront Area of the Mill Brook.

Calvin Goldsmith presented revised information to the Commission. The septic field footprints were reduced using Presby Environmental leaching fields. The stormwater system including the detention basin was also redesigned which allowed the houses to be relocated further from wetlands and also preserved a larger area of naturally vegetated buffer. The pervious pavement driveway, and associated grading, was shifted slightly further away from wetlands. The proposed house on Lot 3 is proposed 42 feet from wetlands at the closest point and the house proposed on Lot 4 is proposed 37 feet from wetlands at the closest point.

Calvin Goldsmith discussed the Riverfront Analysis regarding the adjacent lot for sale. He stated there is a Purchase & Sale Agreement with the homeowner and the owner thought someone from Natural Resources had stated that it was unclear if there was the 20,000 square feet of upland needed. Katie Holden clarified that this type of information was not provided by the Natural Resources office and that perhaps the owner discussed this with Planning. Attorney Roy Cramer stated they might have a zoning violation because they might lose the legal nonconformity of the existing lot.

Paul Feshbach-Meriney commented that the revised plans were better than those previously submitted.

Alexander Easterday stated the revised plans were more suitable and asked about the retaining wall and control of the roadway to limit disturbance. Calvin Goldsmith replied that the retaining wall is a segmented block wall that would sit on a gravel bed with each layer interlocking and would be installed by hand.

Alexander Easterday asked about the total amount of Riverfront Area disturbance. Calvin Goldsmith replied that there was a 675 square foot reduction in the amount of disturbance of the Riverfront Area. The new total of disturbance is approximately 3,800 square feet in Riverfront Area.

Montgomery Lovejoy commented that the project had come a long way and represents a good compromise on economics.

Jamie Bemis raised the issue of setting precedent and expressed concern about how this would impact future applications.

Attorney Roy Cramer stated that this site is unique and could be distinguished from future cases.

Montgomery Lovejoy asked the Applicant about mitigation measures as used in the past for restricted sites where work is proposed within the Commission's setback policies.

Paul Feshbach-Meriney asked if there was an opportunity for mitigation at the base of the retaining wall.

Katie Holden asked about a proposed planting plan. The property owner stated he would be selling the property and would not know what the future owners would want to plant. Katie Holden stated that native plantings were preferred and that this could be a Special Condition of the Order of Conditions.

Steve Verrill noted that the project would have been much easier with a smaller scope of one house, and also presented concern with setting precedent.

Jamie Bemis asked about the possibility of moving structures back to meet the 50-foot setback policy for new structures.

Calvin Goldsmith responded by stating that there was an offset from the septic system and the house is shoe-horned in leaving no room. Even if the garage was reduced, the proximity of the house to the wetlands would not change.

Michael Malouf noted that the encroachment into the precedent area only concerned one corner of the house.

Jamie Bemis indicated that the minimum width for the driveway was 12 feet wide to accommodate emergency access.

Katie Holden suggested an environmental monitor be required during construction and this be a Special Condition.

Paul Feshbach-Meriney noted that a draft Order of Conditions with Special Conditions should be prepared and a draft copy would be provided to Attorney Roy Cramer for review prior to the next meeting in order for the Commission to take a formal vote.

The Commission asked the Applicant to provide a method for permanently demarcating the 25-foot No Disturb Zone from wetlands.

Alexander Easterday noted that the Applicant should propose a permanent demarcation method to prevent future violations and submit revised plans showing proposed markers every 40-50 feet. Michael Malouf asked if markers were needed around the entrance of the roadway. It was agreed they would not be needed below the retaining wall.

The Commission discussed use of large boulders, granite monuments or posts as markings.

Lisa Standley, VHB, stated the revised plan will also include a mitigation planting below the retaining wall.

This hearing was continued to the April 18 meeting at which time the Commission expects to close and issue an Order of Conditions with special conditions.

CAGGIANO – 94 Dalton Road / NOI-DEP File #137-922:

Scott Smyers of Oxbow Associates appeared. This project involves renovations and an addition to an existing single-family home located at the end of a cul-de-sac. All work contained in previously discussed area.

Paul Feshbach-Meriney indicated that DNR staff were unable to review the wetlands due to frozen ground conditions.

The Commission discussed using silt fence only. DNR staff will check this in the field. Scott Smyers stated a site visit with DNR staff had already been scheduled for next week. Scott Smyers discussed equipment access and indicated that some equipment would be used around the back of the home.

This hearing was continued to the April 18 meeting at which time the Commission expects to close and issue an Order of Conditions with special conditions.

MAIONE – 57 Walden Terrace and 500 Walden Street / NOI – DEP File #137-920:

Scott Smyers, Oxbow Associates, and Applicant, John Maione appeared. Real Estate Brokers, K.C. Winslow and Jeanette Creighton also were in attendance. This project involves plantings to mitigate for vegetative clearing and landscaping. Mr. Maione contacted the School Committee and provided them with copies of the Notice of Intent. The Applicant stated the School Committee is deferring to the Division of Natural Resources regarding the restoration plan on school land.

The Commission asked about the type of fence proposed. The Applicant stated they proposed a picket fence, similar to the front of the property.

Katie Holden noted an area of brush within the wetlands that would need to be removed by hand and then replanted with native plantings.

Scott Smyers suggested immediately removing the stump in the backyard.

Paul Feshbach-Meriney asked about the need for invasive species control. Scott Smyers stated that he had visited the site after brush had been removed and hadn't seen any invasives, but that Katie Holden had observed invasives such as Asiatic bittersweet on the site. The Commission suggested a monitoring plan for invasives for a period of three years.

Katie Holden suggested that the Division of Natural Resources be supplied with an invasive species plan before closing the hearing.

The homeowner requested being responsible for monitoring. A wetland scientist could be on-site when plantings occurred and labeled accordingly, but then he would monitor.

Katie Holden stated that a professional is required to monitor and submit an annual report to the Division of Natural Resources.

Alexander Easterday noted that a professional should sign off on the monitoring plan.

Scott Smyers indicated that a potential future homeowner wanted to replace and slightly enlarge an existing deck. The proposed deck would be 16 feet long instead of 12 feet long.

John Maione expressed regret for the events that had previously transpired. He said that they did take some construction debris out. He went beyond the boundaries and had good intentions, but had learned through this experience.

Katie Holden stated that applicants should always contact the DNR office prior to work to avoid costly reparations after the fact.

The Commission discussed if the hardwoods would outcompete the pine trees being planted in the long term.

Paul Feshbach-Meriney requested the proposed deck be shown on revised plans.

Montgomery Lovejoy asked how close the deck was to wetlands. The Applicant replied the deck was approximately 50 feet from wetlands.

K.C. Winslow, Real Estate Broker, indicated that they have provided potential buyers with a disclosure statement and a copy of the Notice of Intent making sure that any potential buyer is on board with the project and understands its significance.

CPW – Townwide / NOI – DEP File #137-924:

This project involves a general permit for minor invasive species removal. Katie Holden stated to the Commission Members that no comments from DEP had been received and that she would contact DEP to determine whether any comments were forthcoming. Hearing continued.

NEW APPLICATIONS:

SMITH – 66 Upland Road / RDA #07-04:

Markus Pinney of Land Use & Environmental Consultant, and Jonathan Smith, property owner, appeared. This project involves cutting and removing ten trees within the Riverfront Area. Markus Pinney stated that the Applicant would like to request removing an additional white pine tree. Mr. Pinney stated that Mark Copp, a Tree Specialist of Acton, MA has been consulted regarding the single white pine tree.

Montgomery Lovejoy moved to issue a Finding that no determination as to the extent or location of any jurisdictional resource areas on this site is made for this filing. Alexander Easterday seconded. All so voted. Montgomery Lovejoy moved to issue a Determination of Applicability Negative Determinations #2 and #3. Stephen Verrill seconded. All so voted.

CLOSE HEARING/ISSUE PERMITS:

OVERALL – 404 Monument Street – NOI - DEP File #137-921

Markus Pinney of Land Use & Environmental Consultant attending the hearing on behalf of the Applicant. This project consists of demolishing a portion of an existing residential structure; relocating a residential structure and constructing additions; removing a swimming pool; installing a septic system; and associated landscaping.

Alexander Easterday moved to close the hearing. Stephen Verrill seconded. All so voted. Alexander Easterday moved to approve Findings A & B. Montgomery Lovejoy seconded. All so voted. Alexander Easterday moved to issue a standard Order of Conditions with Special Conditions 18-39. Steve Verrill seconded. All so voted.

OTHER BUSINESS:

Warrant Article 41: Improvement & Maintenance of Off Harrington Avenue (By Petition)

Paul Feshbach-Meriney reported that Delia Kaye had not noted any environmental impact from the road. The Commission will review the site. The Commission is not in favor of this Article. Alexander Easterday will draft a statement of the Commission's position for review at the next meeting.

Kevin Dionne, 24 Off Harrington Avenue, noted that the Board on Selectman are not endorsing this Article.

Warrant Article 27: Warner's Pond Dam

Commission Members are in favor of this Article. Alexander Easterday will draft a statement of the Commission's position for review at the next meeting.

Warrant Article 35: Hugh Cargill Farm Management Plan (By Petition)

Katie Holden reported that the Agricultural Committee may decide to withdraw this Article at their meeting tomorrow night. There was also some discussion about potentially amending the Article. The Commission will discuss this at the next meeting.

Warrant Article 31: Walden Woods at CCHS – Conservation Restriction

The Commission is not in favor of this Article. Montgomery Lovejoy will draft a statement of the Commission's position for review at the next meeting.

Warrant Article 30: Playing Fields Funding

The Article was amended and Walden Street and the wastewater treatment plant were taken out of the Article. Montgomery Lovejoy noted that the Board of Selectman were advocating on using a Study Committee. Montgomery Lovejoy will prepare a statement on this Article. Paul Feshbach-Meriney will draft a statement of the Commission's position for review at the next meeting.

506 Old Bedford Road – ZBA Application

The Commission will review the draft comment letter prepared by Tyke Crowley, Town Planner, and submit any comments by Friday morning.

Arena Farms

Arena Farms is subject to foreclosure and will be sold at public auction on July 10, 2007. Stephen Verill asked if the Town had the right of first refusal. Katie Holden stated that Chris Whelan, Town Manager, has requested legal advice from Town Counsel on this issue.

New Life Community Church

Katie Holden provided an update on draft plans by New Life Community Church. The structure has been pulled outside of the 50-foot No Structure setback, but two emergency access ways are proposed within the 25-foot No Disturb Zone policy and 50foot No Structure Setback setback to reach the back of the building. Katie Holden stated the Applicant would be checking with the Fire Department to determine if there were any alternatives. The Commission recalled a similar situation at Warner Woods and suggested checking these plans. Montgomery Lovejoy asked if the right of way had been worked out with the Park Service.

Commision Chair

Paul Feshbach-Meriney will step down as Chair after Town Meeting and Alexander Easterday will become Chair.

The Commission discussed establishing a term for Commission Chair.

The meeting adjourned 9:30 p.m.

Respectfully submitted,

Katherine Holden, Natural Resources Assistant Administrator

Cynthia L. Gray, Natural Resources Administrative Assistant